

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
)	Criminal No. 05-10102-JLT
v.)	
)	
)	
JOHN BRUENS, MARY STEWART,)	
MELISSA VAUGHN AND)	
MARK SIROCKMAN,)	
)	
Defendants.)	

**MOTION TO ENLARGE THE TIME OF TWO DAYS FOR THE
GOVERNMENT TO OPPOSE THE DEFENDANTS' JOINT MOTIONS
FOR IMMEDIATE DISCLOSURE OF FED. R. CRIM. P. 404(b) EVIDENCE
AND FOR A BILL OF PARTICULARS
(Assented To)**

Now comes the United States of America, by and through its attorney, Michael J. Sullivan, and requests the Court for an enlargement of time of two days, from March 1 until March 3, 2006, for the Government to file its Opposition to the defendants' Joint Motions for Immediate Disclosure of Fed. R. Crim. P. 404(b) Evidence and for a Bill of Particulars, for the following reasons:

1. On February 27, 2006, the Government responded to several requests of the defendants relating to discovery issues and provided additional documents and evidence to the defendants. A copy of the letter to the defendants enclosing the discovery is attached hereto as Exhibit 1.
2. Due to significant time required to provide the additional discovery to the defendants, as well as unexpected and time sensitive obligations in two other criminal cases, counsel for the

United States requires two additional days to file its Opposition to the defendants Joint Motions in this case. Therefore, the Government requests an enlargement of time to file its opposition until March 3, 2006.

3. The parties have conferred pursuant to L. R. 7.1. Counsel for each of the defendants assent to this motion. The Government has agreed to serve electronically a copy of the Opposition to each of defendants' counsel when filed on March 3, 2006.

Wherefore, for the foregoing reasons, the United States requests the Court to grant an enlargement of time of two days, from March 1 until March 3, 2006, for the Government to file its Opposition to the defendants' Joint Motions for Immediate Disclosure of Fed. R. Crim. P. 404(b) Evidence and for a Bill of Particulars

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Mary Elizabeth Carmody

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CERTIFICATION PURSUANT TO L. R. 7.1 (A)(3)

I hereby certify that on March 1, 2006, I conferred with the attorneys of record for the defendant by telephone to confer regarding the issues presented in this motion. Counsel for the defendants

assented to this motion.

/s/ Mary Elizabeth Carmody

MARY ELIZABETH CARMODY

CERTIFICATE OF SERVICE

I hereby certify that on a true copy of the above document was served upon the attorney of record for each other party by mail on March 1, 2006.

/s/ Mary Elizabeth Carmody

MARY ELIZABETH CARMODY

Assistant U.S. Attorney



U.S. Department of Justice

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United States Attorney
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February 27, 2006

VIA E-MAIL AND FEDERAL EXPRESS

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Re: United States v. John Bruens, et al.
Criminal No. 05-10102-JLT

Dear Counsel:

This letter follows our conference call and various telephone calls regarding the defendant's discovery issues in this case, responds to your letter dated February 8, 2006, and, encloses additional production of discovery to the defendants:

1. The revised and narrowed discovery request regarding "investigation materials related to the investigation of any defendant or physician referred to in the Indictment, that are in the possession of the United States Department of Health and Human Services, Food and Drug Administration, or any other relevant federal agency."

Response:

To date, and after appropriate inquiries, the government has not discovered any such

materials. The government is aware of its continuing obligations and reserves the objections previously set forth in its January 31, 2006 letter.

2. As previously discussed, copies of the CD's containing the electronic databases SCD 0000001-14, SCD 0000016-17, and SCD 0000020-22, are enclosed with a copy for each defense counsel.
3. Also as previously discussed, enclosed are 62 CD's that contain "tif images" of 248 of the approximately 313 boxes that may not have been included in the initial discovery database.¹ Four of the remaining boxes contain video and audio tapes. Copies of the video and audio tapes have either already been disclosed or will shortly be disclosed. The government is in the process of verifying which videos were already produced and will provide copies of any that may not have been previously disclosed.

The remaining 61 boxes, a majority of which are unrelated to the instant Indictment, are available for you to review at the office of the United States Attorney. An index is enclosed for your information and to aid you in determining which boxes you wish to review. These documents continue to be available for your review from 9:00 a.m. to 5:00 p.m. five days a week. Please contact the undersigned to arrange a convenient time for inspection of these documents.

4. Supplemental response to request no. 5, requesting: "[a]ll documents or other materials relating to any other suits filed by any of the qui tam plaintiffs, including, but not limited to, the tape of qui tam plaintiff Frank Garcia's EEOC mediation with Serono."

Response:

Enclosed is the docket report in *United States ex. rel. Driscoll*, C.A. No. 94-11491-RWZ, which directs you to records that are publicly available. As stated previously, the remainder of this request is overbroad and well beyond the obligations of the United States under Rule 16 and the local rules. Moreover, the United States does not intend to introduce any such documents or materials in its case-in-chief, other than any documents previously produced. In addition, this request asks for documents that are subject to the attorney work product privilege. Please be advised once again that the United States is not waiving the attorney work product privilege, or any other privilege, therefore, any documents that may be subject to any such privilege(s) will be withheld on that basis. Finally, this request may necessarily encompass agent notes. The United States will not

¹ As time is of the essence and the United States does not presently have the personnel to upload the 62 CD's into individual databases, it is more time efficient for all parties for the United States to disclose one set of these 62 CD's to the defense, Attorney Tracy Miner, on behalf of each of the defendants. Attorney Miner can then coordinate distribution of the CD's to add to the database for each defendant.

produce any agent notes beyond the obligations set forth in *United States v. Vallee*, 380 F.Supp. 2d at 14-15.

5. **Supplemental response to your requests nos. 6, 7, 8, 9 and 10:**

Response:

In addition to its previous disclosures, enclosed are 4 CDs containing the Medicaid Data for Serostim.

6. As we advised in our January 31, 2006 letter and during our conference call, copies of e-mail CDs S Elec 108 and 109 are enclosed for each of the defendants. In our last letter we mentioned an S Elec 110 -- we have confirmed with the company that there is no 110.
7. Also enclosed are documents from Florida Medicaid relating to CommCare Pharmacy, which we just received from the State of Florida.

Please do not hesitate to telephone the undersigned at (617) 748-3290 if you have any questions regarding any of these matters.

Very truly yours,

MICHAEL J. SULLIVAN
United States Attorney

By:

MARY ELIZABETH CARMODY
Assistant U.S. Attorney

Enclosures